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Attorney for Plaintiff,
NATHANIEL SHAPIRO

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATHANIEL SHAPIRO, an individual,

Plaintiff,

VS.

CABLE NEWS NETWORK, INC., a Delaware corporation, PART2 PICTURES LLC, a New York limited liability company, LISA LING, an individual and authorized agent of a business entity currently of unknown form, COURTNEY THOMPSON, individually and as authorized agent of Defendant PART2 PICTURES LLC, HEIDI BURKE, individually and as authorized agent of Defendant PART2 PICTURES LLC, JACKIE HURWITZ, individually and as authorized agent of Defendant PART2 PICTURES LLC, AMY BUCHER, individually and as authorized agent of Defendant PART2 PICTURES LLC, VINCE KELVIN, a/k/a YANN VON KANEL, an individual, BAO THAI VU, a/k/a "TYLER", an individual, LOS ANGELES SELF-EMPOWERMENT CENTER, a/k/a THE SELF-EMPOWERMENT CENTER, a business entity currently of unknown form; DOES 1 through 50, ROE Business Entities 51-100.

Defendants.

Case No.: 2:17-cv-03033-APG-CHW

**PLAINTIFF'S EX-PARTE MOTION TO
SET ASIDE ORDER OF DISMISSAL
WITHOUT PREJUDICE WITH
RESPECT TO DEFENDANT VU
PURSUANT TO FED.R.CIV.P 60(b) AND
HAVE SAID DEFENDANT DEEMED
SERVED**

1 **COMES NOW**, Plaintiff Nathaniel Shapiro by and through his attorney THOMAS S.
2 SHADDIX, ESQ. of the LAW OFFICE OF THOMAS S. SHADDIX and hereby respectfully submits
3 his Ex-partes Motion to Set Aside Order of Dismissal Without Prejudice with Respect to Defendant
4 Vu Pursuant to Fed.R.Civ.P 60(b) and Have Said Defendant Deemed Served.

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6 Dated this 18th day of May, 2018.

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Respectfully submitted,

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LAW OFFICE OF THOMAS S. SHADDIX

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/s/ Thomas S. Shaddix
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Attorney for Plaintiff,
NATHANIEL SHAPIRO

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STATEMENT OF RELEVANT FACTS

On April 16, 2018 this Honorable Court entered an Order dismissing this litigation without prejudice against Defendant Bao Thai Vu because return of service had not been provided to the Court prior to April 12, 2018. For the reasons set forth herein, this Order should be set aside with respect to Defendant Vu and he should be deemed served.

Several weeks prior to the expiration of the deadline, undersigned counsel was in contact on at least three (3) separate telephone calls with the San Diego County Sheriff's Department, Civil Service Division ("SDCSD") to ascertain and clarify their requirements. Defendant Vu is known to Plaintiff to be quite a transient individual, and therefore several professional skip traces were conducted, at considerable cost, in order to locate his whereabouts. It was determined through due diligence that he was then currently a resident of North San Diego County in an area known as Vista, California. Counsel obtained a certified copy of the summons, and along with a copy of the complaint as well as the requisite payment, sent the same overnight delivery via FedEx to the SDCSD.

Periodic, but regular calls were made to the SDCSD to check on the status of the service. Counsel was told that service had not been effectuated yet. As the deadline approached, daily calls were made to the SDCSD impressing upon them the urgency of the matter. It was during one of these calls that an agent of the SDCSD informed counsel that a few years ago, the SDCSD had stopped serving process for lawsuits which originated outside of California. After all of the contact counsel had had with them about this matter, including obtaining their requirements for service in which agents of the SDCSD were clearly told this was a lawsuit pending in United States District Court for the District of Nevada, counsel was shocked at all of the misinformation he had been given. Counsel is not inferring that this misinformation was intentional, but it certainly glaringly inconsistent, and upon information and belief, negligent on the part of the SDCSD. Counsel was informed that the materials had been mailed back to him regular mail on a certain date, however, that mail did not arrive for two and one-half weeks from the date represented.

Immediately counsel contacted a private civil process service in San Diego County and hired

1 them, at five (5) times cost of the SDCSD. The owner of the company, a licensed private detective
2 and process server, acknowledged credit card payment and receipt of the documents to be served.
3 He gave it to one of his licensed employees, and personal service of the summons and complaint
4 were made upon Defendant Vu on April 13, 2018 (Please see Exhibit "1", attached hereto and
5 incorporated herein). The owner of the company informed counsel of the service, and also said that
6 they had the service on video as a matter of practice. The skip traces had been correct.

7 **Fed.R.Civ.P 60(b)(1) states as follows:**

8 (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the
9 court may relieve a party or its legal representative from a final judgment, order, or proceeding for
10 the following reasons:

11 (1) mistake, inadvertence, surprise, or **excusable neglect**; [Emphasis added].

12 This debacle concerning the service of process on Defendant Vu would not have occurred
13 but for the inexcusable and inconsistent information provided to counsel by agents of the SDCSD.
14 In the interests of justice, it is respectfully submitted that this Motion should be granted in its
15 entirety, and Defendant Vu should be deemed properly served with process in this matter.

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17 Dated this 18th day of May, 2018.

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Respectfully submitted,

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20 LAW OFFICE OF THOMAS S. SHADDIX

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/s/ Thomas S. Shaddix
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Attorney for Plaintiff,
NATHANIEL SHAPIRO

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1 **DECLARATION OF THOMAS S. SHADDIX, ESQ. TO 28 U.S.C. 1746**
2 **IN SUPPORT OF MOTION**
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4 THOMAS S. SHADDIX, ESQ. declares as follows:

5 1. I am an attorney at law duly licensed to practice before this court and am the retained
6 counsel of Plaintiff. I make the following declaration and statements of fact of my own personal
7 knowledge, except as to those statements made upon information and belief, and as to those matters,
8 I believe them to be true.

9 2. That pursuant to the provisions of 28 U.S.C. 1746, I hereby declare under penalty
10 of perjury pursuant to the laws of the United States of America that the foregoing is true and correct
11 of my own personal knowledge, except as to those statements made upon information and belief,
12 and as to those matters, I believe them to be true.

13 Executed this 18th day of May, 2018 at Las Vegas, Nevada.

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16 /s/ Thomas S. Shaddix
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18 THOMAS S. SHADDIX, ESQ.
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